

**INTERIM PROCEDURE RE ANNUAL MEMBERSHIP FEE, CHARGEABLE AND
NONCHARGEABLE AMOUNTS,
REDUCTION, APPEALS**

(Amended by the Board of Governors, April 1, 2000)

Section I. Reduction of Annual Membership Fees for 2000

A Section 6140.05 of the Business and Professions Code provides that each member of the State Bar shall be provided the option of deducting five dollars (\$5) from the annual membership fee if the member elects not to support lobbying and related activities by the State Bar outside of the parameters established by the United States Supreme Court in *Keller v. State Bar of California*. The Board of Governors has reviewed the State Bar's budgeted activities for the year 2000 and determined that all of the planned activities, other than legislative activities, are chargeable to the annual membership fee. Therefore, the Board of Governors set the advance reduction available to members at five dollars in accordance with the provision of section 6140.5.

B The January issue of the California Bar Journal shall contain an explanation of the 2000 membership fee and the basis for the advance reduction approved by the Board of Governors. This notice shall contain a general description of State Bar activities for 2000 and a listing of the legislative program adopted by the Board of Governors, including a determination regarding whether each legislative proposal falls within the parameters established by *Keller*.

C If the Board of Governors adopts additional legislative positions during the course of 2000, the State Bar shall publish a notice listing these legislative positions and including a determination regarding whether each legislative proposal falls within the parameters established by *Keller*. The notice shall be published in the California Bar Journal, in the issue immediately following the board meeting at which the legislative position(s) were adopted.

Section 2. Objection to Advance Reduction.

A. Any member may, within 45 days of the date of publication of a notice in the California Bar Journal, file with the Acting Executive Director of the State Bar a written objection to the designation of a State Bar activity or legislative position as chargeable. The written objection must be made individually and separately, shall state the challenger's name, address, telephone number, bar number, and the activity or legislative position that is the subject of the objection. The objection shall be served on the Acting Executive Director at the main office of the State Bar at 180 Howard Street, San Francisco, California. Objectors must make full payment of their annual membership fee less only the advance reduction. Written objections must be postmarked in an envelope correctly addressed to the Acting Executive Director or personally delivered to the State Bar's main office on or before the 45th day following the publication date of the California Bar Journal. Failure to timely comply with the requirements of this section shall constitute waiver of any right to object. Failure to make full payment of membership fees minus only the advance reduction may subject the member to a late payment assessment and other penalties provided for in section 8, article I, of these rules and in section 6143 of the Business and Professions Code.

B. After a written objection has been timely received, the State Bar shall promptly place the amount of the objector's membership fee in escrow in an interest bearing account pending determination of the objection. The escrow amount need not include the portion of the membership fee for those activities that no dissenter could reasonably challenge. If the State Bar in its discretion elects to place less than 100 percent of the challenged amount in escrow, such escrow amount shall be independently audited. The provisions of this section do not apply to requests for refund under section 3.

C. At its next regularly scheduled meeting following the applicable deadline for timely receipt of an objection or as soon thereafter as the objection may be considered, the Board shall decide whether to remit part or all of the escrow amount to the objector and/or to refer the objection to arbitration. The Board may determine whether to consolidate challenges.

D. After any decision to arbitrate, the objector(s) and the State Bar may mutually agree to an impartial arbitrator. In consolidated challenges, an arbitrator may be selected by agreement between the State Bar and at least 75 percent of the objectors. If no agreement can be reached on an arbitrator within 30 days following the decision to arbitrate, the American Arbitration Association shall appoint an arbitrator. The State Bar may extend such time to reach an agreement, not to exceed an additional 30 days.

E. Arbitrations shall be heard at the San Francisco or Los Angeles office of the State Bar, as determined by the State Bar.

F. The issue for arbitration shall be whether the challenged activity or legislative position is germane under the standard set forth by the United States Supreme I Court in *Kellerv*. State Bar 496 U.S. I (1990). I

G. The arbitration shall be expeditious, fair, and informal in nature. The State Bar and objector(s) may offer such evidence as they desire and shall produce additional evidence as the arbitrator may deem necessary to an understanding and determination of the issue. The arbitrator shall judge the relevance and materiality of evidence offered, and conformity to the rules of evidence shall not be necessary. The arbitrator may receive and consider evidence of witnesses by declaration or affidavit.

H. The arbitrator shall issue a final written decision no later than 30 days after submission of the final post-arbitration briefs. If the decision of the arbitrator concludes that the challenged expenses were improperly charged to the annual membership fee, the decision shall include an award for refund of the pro rata portion of the membership fee with the interest earned as of the date the objector's membership fees were received by the State Bar.

3. Public Agency Refund Procedure

A. Public agencies which use public funds to pay the annual membership fee of their public employees will be treated by the State Bar as generally objecting to those activities as to which the issue of chargeability may be reasonably disputed. No public agency may assert or seek to represent individual objections or the viewpoints of individual employees without the written consent of the individual public employee.

B. In the event an award is made to individual objectors as provided in section 2, such public agencies will be .entitled upon timely demand, to a refund. The amount of the refund

shall be the aggregate of all awards plus interest that would have been payable to the public employees on whose behalf the public agency paid membership fees had the public employees filed individual challenges.

C. The State Bar shall maintain a list of the names and addresses of all public agencies known to the State Bar, which list shall be subject to public inspection upon reasonable notice. Upon written request, public agencies shall be included in the list maintained by the State Bar. If an award is made to individual objectors, the State Bar shall notify all listed public agencies of their entitlement to demand a refund. Such notice shall be in writing and shall be given within thirty (30) days of the award to the individual challengers.

D. A refund demanded by a public agency shall be in writing and shall include: (1) the name and address of the public agency making the demand and entitled to the refund; (2) a statement that the public agency is making a refund demand pursuant to this section; and (3) a list of the names and bar numbers of all public employees whose bar fees the public agency paid with public funds. A refund demand must be served on the Acting Executive Director at the main office of the State Bar in San Francisco, California, within sixty (60) days of the date of service of written notice by the State Bar of the public agency's entitlement to demand a refund

E. The provisions of this section do not relieve the public employee as a member of the State Bar of any obligations, penalties, or forfeitures under the law if the public agency fails to timely pay the public employee's membership fee, take the advance deduction or request a public agency refund.